IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 928/2006
(Ahmed Khan & Ors. Vs. State of Rajasthan & Ors.)

Date of Order : 13/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Vijay Purohit for the petitioner
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 18.4.2006 passed by Additional Sessions Judge, Phalodi, district Jodhpur (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioners against the order dated 20.9.2005 passed by Sub-Divisional Magistrate, Phalodi (for short 'the Executive Magistrate' hereinafter), was dismissed on the ground that the order passed by the Executive Magistrate is an interlocutory order and revision petition is not maintainable. Be that as it may, from the perusal of the order passed by the courts below it cannot be said that the Executive Magistrate committed any error or illegality in attaching the disputed

property . Both the parties claim the disputed property to be their graveyard and bent upon to commit breach of peace.

Learned counsel for the petitioners submits that now the right of the parties have been decided by the competent Revenue Court. Proviso 1 to sub-section (1) of Section 146 Cr.P.C. provides that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of peace with regard to the subject of dispute.

If the rights of the parties have been decided by the competent Court, then it is open for the petitioners to move the Executive Magistrate with the decision of the competent Court.

The criminal misc. petition is accordingly disposed of.

(H.R.PANWAR),J.

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